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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 458

RUTH LAMAR LEHMAN,
Petitioner,

against

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO REVIEW THE JUDGMENT OF THE COURT OF APPEALS FOR THE SECOND CIRCUIT

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ON PETITION FOR A WRIT OF CERTIORARI TO REVIEW THE JUDGMENT OF THE COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above cases on June 29, 1956.

Opinions Below

The opinion of the Tax Court (R45), Docket Nos. 49981, 49982, and 49983, is reported at 14 T. C. M. 928. The opinion of the Court of Appeals for the Second Circuit (R114; Appx. p. 1) is reported at F. 2d . The opinion in the related case of Robert Lehman (R108) is reported at 17 T. C. 652.

Jurisdiction

The judgment of the Court of Appeals for the Second Circuit was made and entered on June 29, 1956 (R116-121) and a copy thereof is included in the appendix to this petition at pages 3-8. The jurisdiction of this court is invoked under 28 U. S. C. Section 1254(1).

Questions Presented

The ultimate question involved is whether annual payments of $5,000 made by petitioner's ex-husband, Robert Lehman, to petitioner's mother constitute income taxable to petitioner under Section 22(k) of the Internal Revenue Code of 1939. This question depends for determination on whether the amounts so paid were constructively received by petitioner in discharge of a legal obligation imposed upon or incurred by Robert Lehman because of the marital or family relationship, or whether, in the alternative, they represent an assignment of income by Robert Lehman which was without tax effect.

Statute, Regulations, and Rulings

The statute involved is Section 22(k) and Section 23(u) of the Internal Revenue Code of 1939. The Regulations involved are the sections of Regulations 111 issued thereunder. Section 23(u) and the relevant portions of Section 22(k) and of the Regulations are set out verbatim below.

INTERNAL REVENUE CODE OF 1939.

SECTION 22. GROSS INCOME.

* * * *

(k) [as added by Section 120, Revenue Act of 1942, c. 619, 56 Stat. 798] Alimony, Etc., Income.—

In the case of a wife who is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, periodic payments (whether or not made at regular intervals) received subsequent to such decree in discharge of, or attributable to property transferred (in trust or otherwise) in discharge of, a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by such husband under such decree or under a written instrument incident to such divorce or separation shall be includible in the gross income of such wife, and such amounts received as are attributable to property so transferred shall not be includible in the gross income of such husband. This subsection shall not apply to that part of any such periodic payment which the terms of the decree or written instrument fix, in terms of an amount of money or a portion of the payment, as a sum which is payable for the support of minor children of such husband. * * * *

SECTION 23. DEDUCTIONS FROM GROSS INCOME.

* * * *

(u) [as added by Section 120, Revenue Act of 1942, supra] Alimony, Etc., Payments.—In the case of a husband described in section 22(k), amounts includible under section 22(k) in the gross income of his wife, payment of which is made within the husband's taxable year. If the amount of any such payment is, under section 22(k) or section 171, stated to be not includible in such husband's gross income, no deduction shall be allowed with respect to such payment under this subsection.

TREASURY REGULATIONS 111, PROMULGATED UNDER THE INTERNAL REVENUE CODE OF 1939.

"§ 29.22 (k)-1. ALIMONY AND SEPARATE MAINTENANCE PAYMENTS; INCOME TO FORMER WIFE.

(a) *In general.* Section 22(k) provides rules for treatment in certain cases of payments in the nature of or in lieu of alimony or an allowance for support as between spouses who are divorced or legally separated under a court order or decree. For convenience, the payee spouse will hereafter in this section be referred to as the 'wife' and the spouse from whom she is divorced or legally separated as the 'husband.' See section 3797(a)(17).

In general. Section 22(k) requires the inclusion in the gross income of the wife of periodic payments (whether or not made at regular intervals) received by her after the decree of divorce or of separate maintenance. Such periodic payments may be received from either of the two following sources:

(i) In discharge of a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by the husband, or

(ii) Attributable to property transfered (in trust or otherwise) in discharge of a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by the husband.

The obligation of the husband must be imposed upon him or assumed by him (or made specific) under either of the following:

(i) A court order or decree divorcing or legally separating the husband and wife, or

(ii) A written instrument incident to such divorce or legal separation.

* * * *

Section 22(k) applies only where the legal obligation being discharged arises out of the family or marital relationship in recognition of the general obligation to support, which is made specific by the

instrument or decree. Thus, section 22(k) does not apply to that part of any periodic payment which is attributable to the repayment by the husband of, for example, a bona fide loan previously made to him by the wife, the satisfaction of which is specified in the divorce decree as a part of the general settlement between the husband and wife.

* * * *

(d) *Payments for the support of minor children.* Section 22(k) does not apply to that part of any periodic payment which, by the terms of the decree or the written instrument under section 22(k), is specifically designated as a sum payable for the support of minor children of the husband. The statute prescribes the treatment in cases where an amount or portion is so fixed but the amount of any periodic payment is less than the amount of the periodic payment specified to be made. In such cases, to the extent of the amount which would be payable for the support of such children out of the originally specified periodic payment, such periodic payment is considered a payment for such support. For example, if the husband is by terms of the decree required to pay $200 a month to his divorced wife, $100 of which is designated by the decree to be for the support of their minor children, and the husband pays only $150 to his wife, $100 is nevertheless considered to be a payment by the husband for the support of the children. If, however, the periodic payments are received by the wife for the support and maintenance of herself and of minor children of the husband without such specific designation of the portion for the support of such children, then the whole of such amounts is includible in the income of the wife as provided in section 22(k). Except in cases of a designated amount or portion for the support of the husband's minor children, periodic payments described in section

22(k) received by the wife for herself and any other person or persons are includible in whole in the wife's income, whether or not the amount or portion for such other person or persons is designated."

STATEMENT

The Facts

Petitioner and Robert Lehman were married in 1929. They had no children. On March 14, 1934 they entered into a separation agreement and property settlement and on May 1, 1934 petitioner obtained a divorce in Nevada from Robert Lehman. The divorce decree approved and incorporated the agreement. (R54-5)

The agreement contained the following relevant paragraphs (R97-101):

> AGREEMENT made this 10th day of March, 1934, by and between ROBERT LEHMAN, party of the first part (hereinafter referred to as the "Husband") residing at New York City, and RUTH LEHMAN, party of the second part (hereinafter referred to as the "Wife") residing at New York City:
>
> WITNESSETH:
>
> * * * *
>
> WHEREAS, the said Husband and Wife desire to continue to live separate and apart and to provide for the maintenance and support of the said Wife in lieu of dower and all further claims by her for support; and
>
> WHEREAS, the Wife is the sole support of her mother, Josephine Lamar, and desires hereby to make provision for her support; and
>
> * * * *

NOW, THEREFORE, in consideration of the mutual covenants herein contained and the duty of the Wife to support her mother, and for other good and valuable considerations, the parties hereto mutually agree and covenant with each other as follows:

* * * *

2. The Husband agrees to pay to the Wife for her maintenance and support so long as she shall live and remain unmarried, the sum of Twenty Thousand ($20,000) annually, in equal quarterly installments of Five Thousand Dollars ($5,000) each, payable in advance on the tenth day of March, June, September and December of each year.

3. The Wife agrees that the payments provided to be made to her, and for her benefit pursuant to the provisions hereof, shall be for her full and complete maintenance, support, clothing and all other necessaries of every kind and for the full satisfaction of the duty of support by the Husband.

4. The Husband agrees to pay to the Wife's mother, Josephine Lamar, for and in behalf of said Wife, the sum of Five Thousand ($5,000) annually in equal quarterly installments of One Thousand Two Hundred and Fifty Dollars ($1,250) each, payable in advance on the tenth day of March, June, September and December of each year so long as the said Josephine Lamar shall live.

5. In case a divorce is obtained by either party and the Wife shall thereafter remarry, the Husband shall make no further payments to the Wife and all obligations to make any payments hereunder to said Wife shall cease and determine, but the Husband shall continue to pay the sum of Five Thousand Dollars ($5,000) annually as aforesaid to the Wife's mother, Josephine Lamar, so long as she shall live.

* * * *

7. The Wife agrees to accept the payments and covenants as hereinabove provided for in full satisfaction of and in lieu of dower, support and maintenance of the Wife by the Husband.

* * * *

14. This agreement is and shall be deemed to be a New York contract and shall be governed and construed by and in accordance with the laws of the State of New York.

* * * *

During each of the years involved, Robert Lehman paid $20,000 to petitioner, Ruth Lehman, and $5,000 to petitioner's mother, Josephine Lamar, pursuant to the agreement. Petitioner did not include in her income the $5,000 received by petitioner's mother (R55).

The Opinions Below

The Tax Court first considered (opinion reported at 17 T.C. 652) the right of Robert Lehman to deduct the payments made to petitioner's mother under Section 23(u) of the Internal Revenue Code of 1939. It allowed that deduction on the ground that "the payments discharged Ruth's obligation to support her mother" and hence were "constructively received by Ruth in discharge of a legal obligation imposed on [Robert Lehman] because of the marital or family relationship." (R110). The present case was disposed of by the Tax Court with a memorandum opinion (reported at 14 T.C.M. 928) to the effect that the Court's decision was "upon authority of and for the reasons stated in" the case of Robert Lehman. (R46) Upon appeal, the decision of the Tax Court in the

present case was affirmed by the Court of Appeals for the Second Circuit with a per curiam opinion reading in its entirety as follows:

> "The opinion of the Tax Court, Docket Numbers 49981, 49982, and 49983, reported at 14 T.C.M. 928, is affirmed. *Robert Lehman,* 17 T.C. 652." (Appx. p. 2)

Reasons for Granting Writ

This petition for a writ of certiorari is based primarily upon the grounds set forth in Rule 19-1(b) of the rules of this Court. It is submitted that the decision of the Court of Appeals for the Second Circuit in this case is in conflict with the decision of the Circuit Court of Appeals for the Seventh Circuit in the case of *Mandel* v. *Commissioner,* 229 F. 2d 382 (C.A. 7th, 1956), as well as with the decisions of this Court in *Lucas* v. *Earl,* 281 U. S. 111 (1930), *Helvering* v. *Eubank,* 311 U. S. 122 (1940) and *Helvering* v. *Horst,* 311 U. S. 112 (1940). It is further submitted that the Court of Appeals has in this case determined a question of New York law in a way that conflicts with the decisions of the highest court of New York.

Argument

1. The Decision of the Court of Appeals for the Second Circuit Is in Conflict with the Decision of the Court of Appeals for the Seventh Circuit in Mandel v. Commissioner, 229 F. 2d 382.

(a) Sections 22(k) and 23(u) Apply Only to Payments Received in Discharge of the Husband's Obligation to Support His Wife and Minor Children.

Sections 22(k) and 23(u) of the Internal Revenue Code, taken together, provide that certain payments made by a husband to the wife from whom he is separated or divorced will be taxable to the wife and, if so taxable, will be deductible by the husband. Section 22(k) sets out very specific tests for the taxation of payments to the wife. Not only must the payments be made pursuant to a court decree or pursuant to a written instrument incident to such decree but they must be made "in discharge of a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by such husband. . . ."

Consistent with Sec. 29.22(k)-1(a) of the Regulations (p. 4, above) and Congressional intention as disclosed in the Committee Reports (H. Rep. No. 2333, 77th Cong., 1st Sess., p. 72; S. Rep. No. 1631, 77th Cong., 2nd Sess., p. 83), the courts have consistently held that the obligation herein referred to is the general obligation of support arising from the marriage, the husband's obligation to support his wife and children.

Cox v. *Commissioner,* 176 F. 2d 226 (C.A. 3d, 1949), *aff'g* 10 T. C. 955 (1948);

Charles Campbell, 15 T. C. 355 (1950);

Frederick S. Dauwalter, 9 T. C. 580 (1947).

In the *Cox* case, above, the Tax Court stated (at p. 958):

> "It seems obvious that the statute is intended, in the ordinary situation at least, to provide that the husband's marital obligation to support his wife may be continued either by divorce decree or a contract taking its place in that regard; and that

> in the ordinary sense therefore 'incident to' the divorce would involve an agreement prior thereto or coincident therewith. Can a husband, freed by divorce decree from such obligation, nevertheless later reassume such obligation and shift the taxation of income thereon to the former wife receiving it?"

The same principle was restated by the Court of Appeals (at 176 F. 2d 226, 228):

> "And the decree or written instrument merely reduces to certain and specific detail the 'general obligation of support' arising out of the marital relationship."

(b) Comparison of the Mandel and Lehman Cases.

The present case involves payments by a husband to his ex-wife's mother. The case of *Mandel* v. *Commissioner,* 229 F. 2d 382 (C.A. 7th, 1956) involved payments by a husband to his ex-wife for the support of adult children of his ex-wife and himself. In both cases the payments made were for the support of someone other than a wife or minor child, for the support of someone to whom the husband was under no obligation because of the marital or family relationship. In the present case the Court of Appeals for the Second Circuit held that the payments were taxable to the wife and hence, by necessary implication, deductible by the husband. In the *Mandel* case the Court of Appeals for the Seventh Circuit held that the payments were not deductible by the husband.

This conflict in the result reached in the two cases is emphasized by the following factual comparisons:

> (i) In both cases the payments were made to or for the physical support of someone other than a wife or minor child.

(ii) In the *Mandel* case the payments were made to the wife for the children. In the present case the payments were actually made directly to the third person, *i.e.*, the wife's mother.

(iii) In the *Mandel* case the separation agreement provided for payments to or for the children for the term of their lives and not merely during their minority. In the present case the agreement provides for payments to the wife's mother for her life, regardless of the wife's death or remarriage.

(iv) In the *Mandel* case the Court found that no part of the payments were made to the wife for *her* support or maintenance. In the present case the payments were made directly to the wife's mother and were never received or used by the wife.

(v) In the *Mandel* case the wife had no legal obligation to support the children after they reached their majority. In the present case the wife had no legal obligation to support her mother under either the common or statutory law of New York even though the Tax Court postulated such an obligation.

Both the *Lehman* and *Mandel* cases were decided by the Tax Court. In the *Mandel* case, the Tax Court denied the deduction to the husband. In the *Lehman* cases the Tax Court allowed the deduction to the husband and taxed the payments to the wife.

Since it has not even been suggested that Robert Lehman "by reason of the marital or family relationship" incurred any direct obligation to support Ruth Lehman's mother, the holding in the Lehman cases was and had to be based upon the assumption that the pay-

ment to Ruth Lehman's mother in some way discharged Robert Lehman's obligation to support his ex-wife since that obligation is the only obligation which was imposed on or incurred by him by reason of the marital or family relationship.

The Tax Court in the *Mandel* case, noting that the husband there had the option under the agreement to make the payments directly to the children, stated:

> "It is inconceivable to us that Congress could have intended that petitioner [the husband], by failure to exercise his option of making payments directly to the children, but instead to Edna, could impose tax liability on her at his discretion." (23 T. C. 81, 87.)

Yet referring to the *Lehman* case in which the payments had been made directly to the wife's mother, the Court stated that the payments were deductible by the husband since under the agreement they were "for and in behalf" of the wife and since "if the payments had been to a landlord, a grocer, or the like, there would be no question of them being taxable to [the wife]."

It is submitted that unless in the present case the payments to Ruth Lehman's mother are the legal equivalent of a payment made to Ruth Lehman for her support the decision of the Court of Appeals for the Second Circuit is squarely in conflict with the decision of the Court of Appeals for the Seventh Circuit in the *Mandel* Case. It is further submitted that there is no legal or factual justification for so considering those payments.

(c) The Payments in the Present Case, Like the Payments in the Mandel Case, Were Not Received by the Wife in Discharge of a Legal Obligation Imposed Upon the Husband Because of the Marital or Family Relationship.

(i) *The Payments Discharged no Legal Obligation of the Wife.*

The Tax Court in its opinion in the case of Robert Lehman equated the payments to payments "to a landlord, a grocer, or the like," and stated:

> "The payments discharged Ruth's obligation to support her mother. The $5,000 was constructively received by Ruth in discharge of a legal obligation imposed on the petitioner [Robert Lehman] because of the marital or family relationship. . . ."

There is no common law obligation on the part of a child to support its parents. *Castellani* v. *Castellani,* 176 Misc. 763, 28 N. Y. S. 2d 879 (1941), aff'd sub. nom. *Capaldo* v. *Capaldo,* 263 App. Div. 984, 34 N.Y.S. 2d 400 (1st Dept. 1942), citing the New York and English cases; 67 C.J.S. 727. There is no general statutory obligation in New York (where both parties resided and whose law expressly covered the contract between them) on the part of a child to support its parents. There are certain statutory provisions (Sec. 914, Code of Criminal Procedure, and Sec. 101, Domestic Relations Court Act) under which a child may be compelled to contribute to the support of a parent who is on public relief or who is liable to be a public charge but it has been expressly held, in a case affirmed by the New York Court of Appeals, that the remedy is "for the benefit of the community sustain-

ing the burden of the parent's support," that "only public officials can enforce the remedy," and that "this liability of the child comes solely by statute and *only after proceedings have been taken under it.*" In re *Salm's Guardianship,* 171 Misc. 367, 12 N.Y.S. 2d 678 (Sup. Ct. N. Y. Co. 1939), aff'd 258 App. Div. 875, 16 N.Y.S. 2d 1021 (1st Dept. 1929), aff'd 282 N.Y. 765, 27 N. E. 2d 46 (1940) (italics added). The court in that case denied the application of a father for an allowance from the "abundant" estate of his son.

The finding, therefore, on which the decision of the Tax Court in the case of Robert Lehman and, in consequence, the decisions of the Tax Court and the Court of Appeals in the present case are based is expressly contrary to New York law. Ruth Lehman had not and has not any obligation to support her mother. Cf. *Commissioner* v. *Yeiser,* 75 F. 2d 956 (C.C.A. 6th, 1945) and *H. Cecil Sharp,* 42 B.T.A. 336 (1940) distinguishing *Douglas* v. *Willcuts,* 296 U. S. 1 (1935), and *Helvering* v. *Stuart,* 317 U. S. 154 (1942) in the case of a grantor-wife who, under the applicable state law had no legal obligation to support her minor children.

(ii) *The Separation Agreement Did Not Convert the Payments to the Wife's Mother into Payments for the Wife's Support.*

The Tax Court in its opinion in the case of *Robert Lehman* also referred to the recitations in the separation agreement that the wife was the sole support of her mother and desired to make provision for her support and that the payments to the mother were made "for and in behalf" of the wife and were, with the other payments and covenants of the agreement,

accepted by the wife in full satisfaction of the duty of support by the husband.*

It may be conceded that Ruth Lehman did in fact support her mother at the time this agreement was drawn. However, there is nothing in the record to show that petitioner's mother was without other means of support, let alone anything to suggest that she would, in the absence of the support of her daughter, become a public charge. In the absence of some obligation on the part of Ruth Lehman making the support of her mother part of the necessary expenses of her own existence it is difficult to see how in law or in fact a payment made to her mother can be a payment received by Ruth Lehman for her own support.

The Tax Court appears to feel that, having determined that there was an obligation and having determined accordingly that the payment was "constructively received" by Ruth Lehman, it therefore followed that it was received in discharge of the obligation of support. It cites the recitation in the argreement as confirmation. But even that recitation cannot change the fact that the payment was not in any wise made for the support of Ruth Lehman. It was actually paid to and for Ruth Lehman's mother. It was to continue to be paid after Ruth Lehman's death or remarriage.

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* Petitioner set out at length in her brief below her reasons for believing that this language, in an agreement executed eight years before Sec. 22(k) was enacted, could have had as its only purpose that of giving petitioner's mother the best possible chance of an independently enforceable right under the then unsettled state of the New York law on donee beneficiary contracts. As examples of the New York cases see *Seaver* v. *Ransom*, 224 N. Y. 233, 120 N. E. 639 (1918); *Dreyer* v. *Hyde*, 251 N. Y. 450, 167 N. E. 583 (1929) and *Rector* v. *Teed*, 120 N. Y. 583, 24 N. E. 1014 (1890). See also the discussion in II Williston, Contracts (1935), at p. 1075.

Accordingly, it is submitted that the payment must be regarded as one made to an unrelated third person which presents the identical question that was presented in the *Mandel* case and that, accordingly, the decision in this case squarely conflicts with the decision in that one.

(iii) *For Sections 22(k) and 23(u) to Apply the Payments Must Be for the Support of the Ex-Wife. It Is Not Enough for Them To Be So Designated by Her.*

It was suggested by Robert Lehman, in a brief filed amicus in the Court of Appeals, that it was not necessary that the payment be made for support; that it was enough if, as the agreement here recites, the payment was accepted in discharge of the obligation of support. It is submitted that such an argument is unsound and that it vitiates the purpose of Sections 22(k) and 23(u). The purpose of those sections was to provide a limited exception to the general rule regarding assignments of income applicable only to payments made to a wife for her support. Even payments for the support of minor children were not covered. In such a context, the parties may not shift the tax burden among themselves at will merely by providing that payments made to the wife's favorite charity or friend are made "for her and in her behalf".

The payments in this case are not payments to a landlord or grocer which to the extent they represented past or future food or shelter used by Ruth Lehman would of course be payments for her support. The payments in this case are payments made to and expressly for the support of another to whom Ruth Lehman has no legal obligation.

The Court of Appeals in the *Mandel* case, suggesting a possible distinction between the *Lehman* and *Mandel* decisions in the Tax Court, stated that in the *Lehman* case the wife was relieved of "the agreed obligation to support her mother." But even if the separation agreement had imposed an obligation on Ruth Lehman to support her mother, which it did not, one cannot be "relieved" of an obligation that did not exist until created by the same instrument providing the relief.

2. The Decision of the Court Below is in Conflict with the Decisions of this Court in Lucas v. Earl, 281 U. S. 111, Helvering v. Eubank, 311 U. S. 122, Helvering v. Horst, 311 U. S. 112, and Gould v. Gould, 245 U. S. 151.

The petitioner, Ruth Lehman is without income except for that received from Mr. Lehman. Accordingly, all of the income with which we are concerned is income earned by Robert Lehman or received by him with respect to property which he owns. It has long been established law, under the decisions of this Court, that income is taxable to the person earning it or with respect to whose property it accrues, and that income, whether earned or unearned, cannot be assigned for tax purposes. No action of a taxpayer (short of outright transfer of the property on which the income accrues) will suffice to shift the tax burden to another.

Congress created in Sections 22(k) and 23 (u) a limited statutory exception to this general rule. Its purpose in so doing is set out in the Report of the Ways and Means Committee, H. Rep. No. 2333, 77th Cong., 1st Sess., p. 46:

> "The existing law does not tax alimony payments to the wife who receives them nor does it allow

> the husband to take any deduction on account of alimony payments made by him. He is fully taxable on his entire net income even though a large portion of his income goes to his wife as alimony or as separate maintenance payments. The increased surtax rates would intensify this hardship and in many cases the husband would not have sufficient income left after paying alimony to meet his income tax obligations. The bill would correct this situation by taxing alimony and separate maintenance payments to the wife receiving them, and by relieving the husband from tax upon that portion of such payments which constitutes income to him under the present law."

Without the express statutory provisions of Sections 22(k) and 23(u) Robert Lehman would without question now be subject to tax on all of his present earned and unearned income as he was in the years 1934 to 1942. This would be true whether or not he had, by contract, court decree, or otherwise, obligated himself to make payments to the present petitioner, to her mother, or to any other person. Under the decisions of this Court in *Lucas* v. *Earl,* 281 U. S. 111 (1930), *Helvering* v. *Eubank,* 311 U. S. 122 (1940), *Helvering* v. *Horst,* 311 U. S. 112 (1940), and *Gould* v. *Gould,* 245 U. S. 151 (1917), no agreement could have relieved him of any part of his tax obligation. Accordingly, if he is to escape tax it is incumbent upon him to come within the statutory exemption created. That exemption is for a payment made in discharge of a legal obligation arising out of the marital or family relationship, a payment made for the support of his ex-wife and for no other purpose.

This is not a case where Ruth Lehman has assigned some right of hers to her mother. Before the

agreement was signed she had only an inchoate right to support which she could neither transfer nor waive. This is rather a case where Robert Lehman in 1934 made two assignments of income originally his. One assignment was to his wife. One was to her mother. It is submitted that the latter assignment, which was not for the support of his wife but expressly for the support of another, is not within the terms of Section 22(k) and accordingly is without tax effect. It is submitted that the decision of the court below is contrary to the decisions of this Court.

3. The Decision of the Court Below Determines a Question of New York Law in a Way That Conflicts with the Established Law of That State.

The decision of the court below was made without opinion and upon the citation only of *Robert Lehman*, 17 T. C. 652. The memorandum decision of the Tax Court in this case had been expressly upon the authority of and for the reasons given in the case of *Robert Lehman*.

As set out above at page 14 the Tax Court in the case of *Robert Lehman* postulated an obligation on the part of Ruth Lehman to support her mother and on the basis of that obligation held that she had constructively received the payments to her mother and that the payments discharged some necessary expense of hers so as to constitute part of her own support.

Also as set out above (page 14 *et seq.*) this finding by the Tax Court of a legal obligation, upon which the decision below rests, is contrary to the decisions of the highest court of the State of New York which is the

state of the parties' residence and which was the state whose law was expressly made governing in the agreement.

CONCLUSION

Petitioner prays that a writ of certiorari be issued to the U. S. Court of Appeals for the Second Circuit to review the decision below.

Respectively submitted,

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DARK PAGE BLEEDTHRU

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 362, 363, 364—October Term, 1955.
(Argued May 16, 1956 Decided June 29, 1956.)
Docket Nos. 23989, 23990, 23991

RUTH LAMAR LEHMAN,
Petitioner,

against

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Before:

MEDINA, LUMBARD and WATERMAN,
Circuit Judges.

Petition for review of a decision of the United States Tax Court. J. Edgar Murdock, *Judge.*

The taxpayer petitions for review of a decision of the Tax Court determining that payments to her mother by her former husband pursuant to a separation agreement subsequently embodied in a divorce decree were includible in the gross income of the taxpayer under the provisions of 1939 Internal Revenue Code § 22(k), as amended 1942. Opinion below unofficially reported at 14 T. C. M. 928. Affirmed.

K PAGE BLEEDTHRU

McGuigan & Kilcullen, New York City (Richard Kilcullen, New York City, of Counsel) *for petitioner on review.*

Charles K. Rice, Assistant Attorney General, Washington, D. C. (Lee A. Jackson, Harry Baum and David O. Walter, Washington, D. C., Attorneys, Department of Justice) *for respondent.*

Simpson Thacher & Bartlett, New York City (Leslie M. Rapp and David G. Sacks, New York City, of Counsel), *for Robert Lehman as Amicus Curiae.*

Per Curiam:

The opinion of the Tax Court, Docket Numbers 49981, 49982 and 49983, reported at 14 T. C. M. 92, is affirmed. *Robert Lehman,* 17 T. C. 652.

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 29th day of June one thousand nine hundred and fifty-six.

Present:

HON. HAROLD R. MEDINA,
HON. J. EDWARD LUMBARD,
HON. STERRY R. WATERMAN,
Circuit Judges

RUTH LAMAR LEHMAN,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Appeal from The Tax Court of the United States.

This cause came on to be heard on the transcript of record from The Tax Court of the United States, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said The Tax Court of the United States be and it hereby is affirmed.

A. DANIEL FUSARO
Clerk

UNITED STATES COURT
OF APPEALS
SECOND CIRCUIT

RUTH LAMAR LEHMAN

v.

COMMISSIONER OF
INTERNAL REVENUE

362

JUDGMENT

UNITED STATES COURT
OF APPEALS
SECOND CIRCUIT

Filed June 29, 1956

A. DANIEL FUSARO
Clerk

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 29th day of June one thousand nine hundred and fifty-six.

Present:

Hon. Harold R. Medina,
Hon. J. Edward Lumbard,
Hon. Sterry R. Waterman,
Circuit Judges

Ruth Lamar Lehman,
Petitioner,

v.

Commissioner of Internal Revenue,
Respondent.

Appeal from The Tax Court of the United States.

This cause came on to be heard on the transcript of record from The Tax Court of the United States, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said The Tax Court of the United States be and it hereby is affirmed.

A. Daniel Fusaro
Clerk

UNITED STATES COURT
OF APPEALS
SECOND CIRCUIT

RUTH LAMAR LEHMAN

v.

COMMISSIONER OF
INTERNAL REVENUE

363

JUDGMENT

UNITED STATES COURT
OF APPEALS
SECOND CIRCUIT

Filed June 29, 1956

A. DANIEL FUSARO
Clerk

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 29th day of June one thousand nine hundred and fifty-six.

Present:

HON. HAROLD R. MEDINA,
HON. J. EDWARD LUMBARD,
HON. STERRY R. WATERMAN,
Circuit Judges

RUTH LAMAR LEHMAN,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Appeal from The Tax Court of the United States.

This cause came on to be heard on the transcript of record from The Tax Court of the United States, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said The Tax Court of the United States be and it hereby is affirmed.

A. DANIEL FUSARO
Clerk

UNITED STATES COURT
OF APPEALS
SECOND CIRCUIT

RUTH LAMAR LEHMAN

v.

COMMISSIONER OF
INTERNAL REVENUE

364

JUDGMENT

UNITED STATES COURT
OF APPEALS
SECOND CIRCUIT

Filed June 29, 1956

A. DANIEL FUSARO
Clerk

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 458

RUTH LAMAR LEHMAN, *Petitioner*

v.

COMMISSIONER OF INTERNAL REVENUE

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the Tax Court (R. 45-46) is not officially reported. The opinion in the related case of *Robert Lehman* v. *Commissioner* is reported in 17 T.C. 652. The opinion of the Court of Appeals (Pet. App. A-1-A-2) is reported in 234 F. 2d 958.

JURISDICTION

The judgments of the Court of Appeals were entered on June 29, 1956. (Pet. App. A-4, A-6, A-8.) The

petition for a writ of certiorari was filed on September 27, 1956. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

QUESTION PRESENTED

Whether the court below erred in affirming the Tax Court's determination that annual payments of $5,000 made by taxpayer's former husband to taxpayer's mother "for and in behalf of" taxpayer, pursuant to an agreement incorporated in a divorce decree, constituted income taxable to taxpayer under Section 22(k) of the Internal Revenue Code of 1939.

STATUTE AND REGULATIONS INVOLVED

The relevant statute and Regulations are Sections 22(k) and 23(u) of the Internal Revenue Code of 1939, and Section 29.22(k)-1(a) of Treasury Regulations 111. These are set out in Appendix B, *infra*, pp. 13-16.

STATEMENT

The facts as stipulated (R. 54-56, 97-107) and found by the Tax Court (R. 45-46) are as follows:

Taxpayer and Robert Lehman were married in 1929. They had no children. On March 10, 1934, they entered into a separation and property settlement agreement which was approved and incorporated in a divorce decree on May 1, 1934. (R. 54-55.) Pursuant to that agreement, during each of the years involved here Robert Lehman made payments of $20,000 to taxpayer and $5,000 to taxpayer's mother, Josephine Lamar. (R. 55.)

Taxpayer included the payment of $20,000 in her returns for each of the years in question. She did not include in income the $5,000 payment made to her mother in each of those years. On her returns for each year she listed her mother and father as dependents. (R. 55-56.)

The relevant provisions of the separation agreement (R. 97-99) are as follows:

> WHEREAS, the said Husband and Wife desire to continue to live separate and apart and to provide for the maintenance and support of said Wife in lieu of dower and all further claims by her for support; and
>
> WHEREAS, the Wife is the sole support of her mother, Josephine Lamar, and desires hereby to make provision for her support; and
>
> * * * * *
>
> NOW, THEREFORE, in consideration of the mutual covenants herein contained and the duty of the Wife to support her mother, and for other good and valuable considerations, the parties hereto mutually agree and covenant with each other as follows:
>
> * * * * *
>
> 3. The Wife agrees that the payments provided to be made to her, and for her benefit pursuant to the provisions hereof, shall be for her full and complete maintenance, support, clothing and all other necessaries of every kind and for the full satisfaction of the duty of support by the Husband.
>
> 4. The Husband agrees to pay to the Wife's mother, Josephine Lamar, for and in behalf of

said Wife, the sum of Five Thousand ($5,000) annually in equal quarterly installments of One Thousand Two Hundred and Fifty Dollars ($1,250) each, payable in advance on the tenth day of March, June, September and December of each year so long as the said Josephine Lamar shall live.

5. In case a divorce is obtained by either party and the Wife shall thereafter remarry, the Husband shall make no further payments to the Wife and all obligations to make any payments hereunder to said Wife shall cease and determine, but the Husband shall continue to pay the sum of Five Thousand Dollars ($5,000) annually as aforesaid to the Wife's mother, Josephine Lamar, so long as she shall live.

* * * * *

In *Robert Lehman* v. *Commissioner,* 17 T.C. 652 (see Appendix A, *infra,* pp. 9-13), the Tax Court held that Robert Lehman was entitled to a deduction of the $5,000 payment to Mrs. Lamar under Section 23(u) of the Internal Revenue Code of 1939 since the payment was taxable to Ruth Lehman under Section 22(k). In the present case, on the authority of and for the reasons stated in the *Robert Lehman* case, the Tax Court held that the payments were taxable to Ruth. (R. 45-46.) In a *per curiam* opinion, the Court of Appeals affirmed. (Pet. App. A-1-A-2.)

ARGUMENT

This case turns upon an interpretation of the terms of a separation agreement entered into by the taxpayer and her former husband, and presents no ques-

tion of general importance. The decision below is correct, there is no conflict, and no occasion for further review.

1. The decision below, affirming that of the Tax Court, is clearly correct. Section 22(k) of the Internal Revenue Code of 1939 (Appendix B, *infra*, pp. 13-14), requires inclusion in the income of a divorced wife of periodic payments received in discharge of a legal obligation which, because of the marital relationship, is incurred by the former husband under the divorce decree or a written agreement incident to the divorce. Correlative Section 23(u) (Appendix B, *infra*, pp. 14-15) authorizes the husband to deduct amounts which are taxable to the wife under Section 22(k). By the terms of the separation agreement incorporated in the divorce decree, taxpayer's husband agreed to pay $20,000 per year directly to taxpayer, and an additional $5,000 per year to taxpayer's mother for life "for and in behalf of said Wife [taxpayer]". The agreement recited that taxpayer was "the sole support of her mother", and that the annual payments to the mother were to be made "in consideration of * * * the duty of the Wife to support her mother". (R. 97-98.) Since the payments to the mother were for taxpayer's benefit, in consideration of her recognized duty to support her mother, they constituted income to taxpayer (*Old Colony Trust Co.* v. *Commissioner*, 279 U.S. 716, 729), and hence were no less taxable to her under Section 22(k) than the balance of the alimony payments made directly to her. Insofar as the husband was concerned, it was immaterial whether

the amounts paid in discharge of his obligation to support the wife were paid directly to her, or to a designated third party for her benefit.

There is no basis in the record or the findings for taxpayer's assumption, on which her entire argument rests, that the payments in question must be viewed as annual gifts by her former husband to her mother. The payments were not voluntary, but were made pursuant to a contractual obligation to pay alimony undertaken in the separation agreement incorporated in the divorce decree. As the agreement itself shows, they were made to the mother "for and in behalf of" taxpayer, and "in consideration" of taxpayer's acknowledged duty to support her mother. In making them, the husband was discharging *pro tanto* his own obligation to support taxpayer—an obligation running to taxpayer, incurred because of the marital relationship, and imposed upon him by the decree. The courts below correctly held, therefore, that all the alimony payments, those made to the mother on taxpayer's behalf as well as those made directly to taxpayer, fell within Section 22(k).

2. The decision below is not in conflict with any other decision. *Mandel* v. *Commissioner,* 229 F. 2d 382 (C.A. 7th), with which taxpayer asserts conflict (Pet. 9, 11-13), involved payments under a separation agreement the terms of which were materially different from those of the agreement here involved. There, the payments were made to adult children for and in behalf of the children themselves, whereas here (as the agreement explicitly provides) the payments were

made to the wife's mother for and in behalf of the wife. Moreover, in the *Mandel* case the wife was under no obligation to support the payee-children, whereas in this case (as the agreement also explicitly recites) the wife was the sole support of the payee-mother. Indeed, in affirming the Tax Court's decision in the *Mandel* case, the Court of Appeals (p. 388) took pains to distinguish that case from this one on these dual grounds.

3. Nor is there any conflict, as taxpayer alleges (Pet. 9, 18-20), with *Lucas* v. *Earl*, 281 U.S. 111; *Helvering* v. *Eubank*, 311 U.S. 122; *Helvering* v. *Horst*, 311 U.S. 112; and *Gould* v. *Gould*, 245 U.S. 151. Those cases stand for the proposition that a gift of income is ineffectual to relieve the donor of income tax. They have no bearing upon the tax treatment of alimony payments under Section 22(k), enacted for the very purpose of shifting tax liability with respect to such payments from the husband to the wife. Taxpayer's reliance upon those decisions begs the issue by assuming—contrary to the findings of both courts below—that the payments in question constituted annual gifts of income by the husband to his mother-in-law, rather than alimony payments made for and on behalf of taxpayer pursuant to a separation agreement incident to a divorce. Both courts below having rejected taxpayer's contention that the payments were gifts to her mother, their concurrent findings are entitled to finality here. *Corn Products Co.* v. *Commissioner*, 350 U.S. 46, 51; *Comstock* v. *Group of Investors*, 335 U.S. 211, 214.

4. Taxpayer also asserts (Br. 9, 14-15) that the decision below, insofar as it holds that the wife was obligated to support her mother, is contrary to New York law. There is no need to pass on the validity of the claim (we believe it to be erroneous), since the courts below relied, not on an interpretation of New York law, but on the recitations in the separation agreement itself that taxpayer was the sole support of her mother, had a duty to support her, and desired to make provision for her support; also on the stipulation in the agreement that the payments to the mother were "for and in behalf of said Wife". The question is one of interpretation of the particular agreement, rather than of state law.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

J. Lee Rankin,
Solicitor General.

Charles K. Rice,
Assistant Attorney General.

Harry Baum,
David O. Walter,
Attorneys.

October 1956

APPENDIX A

ROBERT LEHMAN, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

(17 T. C. 652)

Docket No. 28246

Promulgated October 10, 1951

1. Income-Deduction-Alimony Payments-Sections 23 (u), 22(k).—Payments made by a divorced husband to the mother of his former wife, "for and in behalf of" the wife who was the sole support of her mother are deductible under section 23(u)

* * * * *

OPINION

MURDOCK, *Judge:* The Commissioner determined a deficiency of $6,018.20 for 1944. The issues for decision are whether an annual payment of $5,000 to the mother of the petitioner's divorced wife is deductible under section 23(u) and whether a partnership in which the petitioner had an interest realized ordinary income on January 1, 1944, when some restrictions terminated on stock theretofore received by the partnership. The parties filed a stipulation of facts which is adopted as the findings of fact.

The petitioner filed his individual return for 1944 with the collector of internal revenue for the second district of New York.

The petitioner and Ruth Lamar were married in 1929. They had no children. They entered into a separation and property settlement agreement on March 10, 1934, providing that they would live separately, the petitioner would pay Ruth $20,000 annually

as long as she lives and remains unmarried and would pay Ruth's mother $5,000 annually for life "for and in behalf of" Ruth, and the payments to Ruth and "for her benefit pursuant to the provisions hereof, shall be for her full and complete maintenance, support, * * * and for the full satisfaction of the duty of support by the Husband." The agreement contains a recital that Ruth is the sole support of her mother and "desires hereby to make provision for her support."

Ruth obtained a divorce from the petitioner in Nevada on May 1, 1934, and the agreement of March 10, 1934, was approved in the decree.

The petitioner paid Ruth $20,000 and her mother $5,000 in 1944, pursuant to the agreement. The Commissioner, in determining the deficiency, allowed a deduction under section 23(u) of $20,000 but disallowed the additional deduction of $5,000 claimed.

The petitioner did not testify but introduced a deposition of one of the attorneys who represented him in the 1934 transactions in which the attorney stated that the provisions relating to the payment of $5,000 annually for life to Ruth's mother were inserted at the insistence of an attorney, now deceased, who represented Ruth in those transactions. Ruth, her mother, and an attorney who assisted in representing Ruth in the 1934 transactions gave testimony indicating that the provision for the payments to Ruth's mother originated with the petitioner and was inserted in the agreement because he knew the situation, was fond of his mother-in-law, and wanted to provide for her. However, the origin of the provision is not determinative of the present issue. The contract was prepared and the parties made it their agreement. The terms of that agreement, entered into long before sections 22(k) and 23(u) were enacted, must now be regarded

as expressing the agreement of the parties. Ruth felt obligated to support her mother. The petitioner and Ruth agreed that the petitioner would pay $5,000 annually for the mother's life directly to the mother "for and in behalf of" Ruth and that the payments to be made to Ruth and "for her benefit pursuant to the provisions hereof, shall be for her full and complete maintenance, support, * * * and for full satisfaction of the duty of support by the Husband." If the payments had been to a landlord, a grocer, or the like, there would be no question of their being taxable to Ruth. Cf. *Anita Q. Steward,* 9 T.C. 195; *Estate of Boies C. Hart,* 11 T.C. 16. The payments discharged Ruth's obligation to support her mother. The $5,000 was constructively received by Ruth in discharge of a legal obligation imposed on the petitioner because of the marital or family relationship under a written instrument incident to the divorce. It is therefore taxable to Ruth under section 22(k) along with the $20,000 and likewise is deductible by the petitioner under section 23(u).

* * * * *

Reviewed by the Court.

Decision will be entered under Rule 50.

DISNEY, *J.,* dissenting: I must dissent from the conclusion of the majority on the subject of the first headnote. It depends upon whether payments by a divorced husband to the mother of his former wife, and "for and in behalf of" such former wife, who, it was agreed, was the sole support of her mother, can reasonably be considered within the intendment of Section 22(k) of the Internal Revenue Code. That section, *inter alia,* provides that a periodic payment by the divorced husband to the divorced wife shall be includible in her income and not in his if it is made in discharge

of "a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by such husband" under a decree of divorce or separate maintenance or under a written instrument incident thereto. The question is therefore how broadly such language shall be construed. I realize that in the broadest sense the obligation of the ex-husband here to pay the mother of his former wife might possibly be considered to be imposed upon him "because of the marital or family relationship," merely because without the marital or family relationship there would have been no such mother-in-law and no occasion for him to agree to support such a person. But I cannot conceive that Congress intended to use the above-quoted crucial language in any such broad sense or had in mind the situation such as here involved. Rather, I believe that the legal obligation, in discharge of which the periodic payment must be made in order for it to be taxable to the wife, must be one which is imposed upon the divorced husband, or recognized by him in a written instrument incident to the divorce or settlement or separation, as an essential and integral result of the marital relationship, such as, for example, caring for children or maintaining the former wife. Congress did not, in my view, include a mere promise to pay other matters even though made to the former wife and even though she might have had a duty in that respect, such as to take care of her mother. Obviously no ordinary contemplation of a marital obligation includes support of a mother-in-law. The fact that the $5,000 per annum to be paid to the divorced wife's mother is in addition to the $20,000 to be paid to the divorced wife, shows that the $5,000 was not necessary for the support of the wife and therefore not within reasonable bounds of a marital-based obligation. Though the written agreement involved recites that

Ruth is the sole support of her mother and desires to make provision for her support, the facts neither so show nor show that the $5,000 was any reasonable requirement in that respect, that is, fail to show that Ruth was under any duty of furnishing that much for her mother. No divorce court could, in my opinion, require a divorced husband to support his former mother-in-law, without a voluntary agreement such as this appears to be. In any event, I do not believe that "because of the marital or family relationship," was meant to encompass the situation here involved or relieve the husband from taxation upon income earned by him. The Committee reports of both the House and Senate covering section 22(k) referring to the legal obligation here being discussed state: "This section applies only where the legal obligation being discharged arises out of the family or marital relationship in recognition of the *general obligation to support,* which is made specific by the instrument or decree." (Emphasis added.) 1942-2 C.B., pp. 428, 568. Certainly, general obligation to support does not include obligation to support a mother-in-law. I therefore dissent.

TURNER and TIETJENS, *JJ.*, agree with this dissent.

APPENDIX B

Internal Revenue Code of 1939:

SEC. 22 GROSS INCOME.

* * * * *

(k) [as added by Section 120(a) of the Revenue Act of 1942, c. 619, 56 Stat. 798] *Alimony, Etc., Income.*—In the case of a wife who is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, periodic payments (whether or not made at regu-

lar intervals) received subsequent to such decree in discharge of, or attributable to property transferred (in trust or otherwise) in discharge of, a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by such husband under such decree or under a written instrument incident to such divorce or separation shall be includible in the gross income of such wife, and such amounts received as are attributable to property so transferred shall not be includible in the gross income of such husband. This subsection shall not apply to that part of any such periodic payment which the terms of the decree or written instrument fix, in terms of an amount of money or a portion of the payment, as a sum which is payable for the support of minor children of such husband. In case any such periodic payment is less than the amount specified in the decree or written instrument, for the purpose of applying the preceding sentence, such payment, to the extent of such sum payable for such support, shall be considered a payment for such support.
* * *

(26 U.S.C. 1952 ed., Sec. 22.)

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

* * * * *

(u) [as added by Section 120(b) of the Revenue Act of 1942, *supra*] *Alimony, Etc., Payments.*— In the case of a husband described in section 22(k), amounts includible under section 22(k) in the gross income of his wife, payment of which is made within the husband's taxable year. If the

amount of any such payment is, under section 22(k) or section 171, stated to be not includible in such husband's gross income, no deduction shall be allowed with respect to such payment under this subsection.
(26 U.S.C. 1952 ed., Sec. 23.)

Treasury Regulations 111, promulgated under the Internal Revenue Code of 1939:

Sec. 29.22(k)-1. *Alimony and Separate Maintenance Payments—Income to Former Wife.*—(*a*) *In general.*—Section 22(k) provides rules for treatment in certain cases of payments in the nature of or in lieu of alimony or an allowance for support as between spouses who are divorced or legally separated under a court order or decree. For convenience, the payee spouse will hereafter in this section of the regulations be referred to as the "wife" and the spouse from whom she is divorced or legally separated as the "husband." See section 3797(a)(17).

In general, section 22(k) requires the inclusion in the gross income of the wife of periodic payments (whether or not made at regular intervals) received by her after the decree of divorce or of separate maintenance. Such periodic payments may be received from either of the two following sources:

(1) In discharge of a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by the husband, or

(2) Attributable to property transferred (in trust or otherwise) in discharge of a legal obli-

gation which, because of the marital or family relationship, is imposed upon or incurred by the husband.

* * * * *

Section 22(k) applies only where the legal obligation being discharged arises out of the family or marital relationship in recognition of the general obligation to support, which is made specific by the instrument or decree. Thus, section 22(k) does not apply to that part of any periodic payment which is attributable to the repayment by the husband of, for example, a *bona fide* loan previously made to him by the wife, the satisfaction of which is specified in the divorce decree as a part of the general settlement between the husband and wife.

* * * * *

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